IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1440 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL NARANDAS PATEL

Versus

VIDHYABEN WD/O MOTIBHAI KANAIYALAL

Appearance:
MS MAYA DESAI for MR MD PANDYA for appellants
MR JA ADESHRA for Respondent Nos.1 to 6 & 8 -absent
MR SANDIP C SHAH for Respondent No. 7

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 27/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. By means of filing this appeal, appellant - the owner of the vehicle involved in the accident, challenges the judgment and award dated December 16, 1989 rendered in MACP No. 520 of 1985 by the Motor Accident Claims Tribunal (Aux.), Nadiad, by which the driver and owner of

the vehicle involved in the accident were jointly and severally ordered to pay total compensation of Rs.1,39,800/- together with interest at the rate of 9% and costs thereon to respondents Nos.1 to 6/ claimants.

2. On the fateful day i.e., December 25, 1983, deceased Motibhai Kanaiyalal boarded truck bearing No.GTE 8584 alongwith his wooden planks on payment of fare for himself and wooden planks and was proceeding from Kathwada to Kathlal. When the said truck reached the place of accident, its driver lost control over the steering and as a result of the same the truck overturned and went on the extreme side of the road and fell down. As a result of the same deceased Motibhai was crushed beneath the gunny bags of maize coarse dust which were loaded in the truck and died.

3. It was the case of the claimants that the accident had taken place because of the rash and negligent driving on the part of its driver. So far as the amount of compensation claimed by the claimants is concerned, they have stated in the application that the deceased was a carpenter and was earning Rs.1200/- per month at the relevant time and if he would not have met with the untimely demise he would have earned Rs.5000/per month in future. They, therefore, claimed total compensation of Rs.1,80,000/- together with interest and costs.

4. The driver and owner of the truck involved in the accident were impleaded as party respondent Nos. 1 and 2 and the New India Assurance Company Limited was impleaded as party respondent No.3. Respondents Nos.1 and 2 however, elected not to remain present though duly served whereas respondent No.3 filed its written statement and denied the averments made in the petition. They denied the allegation of rashness and negligence on the part of the driver of truck and also denied the amount of compensation claimed in the petition and it was contended that the claim was on a higher side. Therefore, it was prayed to dismiss the claim petition.

5. The Tribunal held that the accident had occurred because of the rash and negligent driving of the truck by its driver who lost control over the steering and as a result of the same the truck went on the wrong side of the road and capsized and as a result thereof deceased was crushed beneath the gunny bags of maize coarse dust which were loaded in the truck and died.

6. So far as the amount of compensation is

concerned, on the basis of the evidence adduced by the claimants, income of the deceased was considered at Rs.1000/- per month and then after deducting Rs.300/- for personal upkeep of the deceased, the Tribunal assessed the dependency benefit at Rs.700/- per month and then applied 17 purchase factors and worked out the total compensation of Rs.1,42,800/- (700 x 12 x 17) under the head of future economic loss and thereafter the Tribunal deducted Rs.15,000/- towards unexpected expenses and total dependency benefit available to the claimants was assessed at Rs.1,27,800/- and then added Rs.10,000/- for expectation of life and Rs.2000/- under the head of after death ceremony expenses and awarded total compensation of Rs.1,39,800/- together with interest and costs thereon.

7. Ms. Maya Desai, learned counsel for the appellant, has contended that the appellant/owner of the truck and his driver though were party in the proceedings before the Tribunal have not filed any written statement and, therefore, they could not defend their case and in view of the same the matter requires to be remanded to the Tribunal for deciding the question of compensation awardable to the claimants. She also contended that the insurance company filed its written statement and the advocate for the insurance company had not intimated the appellant about such proceedings. Had he been informed about the proceedings then the appellant would have definitely appeared and defended his case. Therefore, she urges that the matter may be remanded to the Tribunal for deciding the question of quantum of compensation awardable to the claimants. On the aspect of compensation awarded to the claimants it was stressed by her that as per settled principles of law in a death case not more than 15 multipliers are adopted by the Tribunal but since in the instant case 17 multipliers are adopted, the amount of compensation awarded to the claimants is on higher side and the same requires to be sliced down. Therefore, in the alternative she urges that the amount of compensation awarded to the claimants may be reduced by allowing this appeal.

8. We have considered the submissions made by Ms. Desai for the appellant and the evidence including the documents forming part of the petition.

9. Be it noted that so far as the accident and the involvement of the offending vehicle is concerned there is no dispute. There is also no dispute that deceased Motibhai boarded the truck alongwith wooden planks and made payment of fare of Rs.3.20 and the said vehicle capsized as its driver lost control over the steering and

deceased was crushed beneath the gunny bags of maize coarse dust and as a result thereof deceased's life was cut short at the crual hands of providence. Therefore, so far as the negligence attributed to the driver of the said truck is concerned, the finding recorded by the Tribunal does not require any interference and we also hold that the accident had taken place because of the rash and negligent driving of the truck by its driver.

10. So far as the compensation awarded by the Tribunal is concerned, it has considered the monthly income of the deceased at Rs.1000/- which is a meagre amount. It has come in the evidence that the deceased was working as a carpenter at the relevant time and he used to employ labourers and used to pay Rs.300/- per month to them. After assessing the income of the deceased at Rs.1000 per month the Tribunal has deducted Rs.300 by way of expenses which the deceased would have incurred for himself and then determined Rs.700 per month as the dependency benefit and thereafter applied 17 multipliers and arrived at the figure of Rs.1,42,800/(700 x 12 x 17). Thereafter the Tribunal has again deducted Rs.15,000/- on account of unexpected expenses and total dependency benefit worked at Rs.1,27,800/- and added Rs.10,000/- for expectation of life and Rs.2000/under the head of after death ceremony expenses and awarded total compensation of Rs.1,39,800/- together with interest and costs thereon and, therefore, in our view, the Tribunal has made deduction twice from the amount of dependency benefit available to the claimants which was not justified. Therefore, we do not find any substance in the said contention of learned counsel for the appellant that it should be held that 17 purchase factors applied by the Tribunal is on a higher side and in the facts and circumstances of the case it should have been 15. Since the income of the deceased was assessed on a very lower side and then deducted twice, we hold that the multiplier of 17 was rightly applied.

11. So far as the interest awarded by the Tribunal is concerned, Ms. Desai has contended that the Tribunal ought to have awarded 6% interest instead of 9%. We do not find any force in the said submission since in the year 1983 the bank rate of interest was between 9% and 12%. Therefore, the contention with regard to awarding the interest at the rate of 6% also is devoid of any merit and the same is also liable to be rejected and accordingly it is rejected.

12. The contention that the appellant and his driver was not afforded opportunity of defending their case has

no substance. From the perusal of the roznama it is clear that the appellant and his driver were duly served by the Tribunal but they elected not to remain present before the Tribunal. Since they elected not to remain present before the Tribunal now at this appellate stage they cannot make any grievance that they had no opportunity to defend their case. The Insurance Company has filed its written statement wherein they have denied negligence of the driver of the truck and the amount of compensation claimed by the claimants and the Tribunal on appreciation and evaluation of the evidence, determined the negligence as well as the amount of compensation which the claimants are entitled to receive.

13. In view of the decision of the Supreme Court in Mallawwa v. Oriental Insurance Co. Ltd., (1999) 1 SCC 403, wherein it is held that persons travelling in goods vehicles, whether owners of the goods or passengers on payment of fare or gratuitous passengers, who died in accident met with by such goods vehicle are not covered by Section 19 (1) (b) (i) and (ii) of the Motor Vehicles Act, 1939, the insurance company of a goods vehicle is not liable to pay compensation for the death and in the instant case the Tribunal has rightly absolved the insurance company from the liability of payment of compensation and correctly fastened the liability on the driver and owner only and in the fairness of the learned counsel for the appellant we should say that she has not raised such a contention in view of the aforesaid judgment.

14. Seen in the above context, we do not find any valid reason to interfere in the impugned award and, therefore, the appeal is liable to be dismissed.

15. For the foregoing reasons, the appeal is dismissed with costs.

(R.K. Abichandani, J.)

27.2.2001. (A.M. Kapadia, J.)